**DATED                                                    202[\*]**

|  |  |  |  |
| --- | --- | --- | --- |
|  | (1) | THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA |  |
|  | (2) | [CONTRACTOR] |  |

|  |  |  |
| --- | --- | --- |
|  | BUILDING CONTRACT  Incorporating and amending the  **JCT Minor Works Building Contract, 2016 Edition**  **Relating to Temporary Hoarding and Security Services for the Notting Hill Carnival Event 2022 at North Kensington.** |  |



**THIS AGREEMENT is dated**

**BETWEEN**

1. **THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA** of Town Hall, Hornton Street, London W8 7NX (Employer, such term to include any successors in title or permitted assigns).
2. **[CONTRACTOR]** incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [ADDRESS] (Contractor).

BACKGROUND:-

1. The Employer wishes to procure the construction of certain works.
2. The Contractor has agreed to carry out the construction of those works, as required by this agreement.
3. The Employer and the Contractor have agreed to incorporate and amend the JCT Minor Works Building Contract, 2016 edition ("**JCT MW 2016**") as set out in this agreement.

**AGREED TERMS:-**

# Interpretation

The following definitions and rules of interpretation apply in this agreement.

## Definitions:

|  |  |
| --- | --- |
| JCT Articles | 1. the section of the JCT MW 2016 titled "Articles". |
| JCT Attestation | 1. the section of the JCT MW 2016 titled "Attestation". |
| JCT Conditions | 1. the section of the JCT MW 2016 titled "Conditions". |
| JCT Contract Particulars | 1. the section of the JCT MW 2016 titled "Contract Particulars". |
| JCT Recitals | 1. the section of the JCT MW 2016 titled "Recitals". |
| Schedule of Amendments | 1. the parties, background, agreed terms and schedules forming part of this agreement, which amend the JCT MW 2016. |

## Capitalised terms used in this agreement have the same meanings as in the JCT MW 2016, unless the meaning in the JCT MW 2016 is different from, or conflicts with, the meaning given in the Schedule of Amendments, in which case the Schedule of Amendments prevails.

## The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the schedules.

## A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

## Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

## A reference to this agreement or to any other agreement or document referred to in this agreement is a reference to this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.

## References to clauses, schedules and annexes are to the clauses, schedules and annexes of this agreement and references to paragraphs are to paragraphs of the relevant schedule.

## Without prejudice to clause 1.2, in case of any difference, discrepancy or conflict between the Schedule of Amendments and the JCT MW 2016, the Schedule of Amendments shall prevail.

## Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative only and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

# Incorporation and amendment of the JCT MW 2016

## This agreement incorporates and amends the JCT MW 2016 as follows:

### it incorporates the JCT Recitals, as amended by Part 1 of Schedule 1;

### it incorporates the JCT Articles, as amended by Part 2 of Schedule 1;

### it incorporates the JCT Contract Particulars, as set out at Part 3 of Schedule 1; and

### it incorporates the JCT Conditions, as amended by Part 4 of Schedule 1.

## This agreement does not incorporate the JCT Attestation.

# Governing law and jurisdiction

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England. The parties hereby submit to the exclusive jurisdiction of the English Courts.

# Counterparts

This Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one Contract.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

|  |  |  |
| --- | --- | --- |
| The Common Seal of **THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA** was hereunto affixed in the presence of: | ) |  |
|  | ) |  |
|  | ) |  |
|  | ) | ……………………………………………….. |
|  | ) | Authorised signatory |

|  |  |  |
| --- | --- | --- |
| Executed as a deed by **[CONTRACTOR]** | ) |  |
| acting by two directors or by a director and the company secretary | ) |  |
|  | ) |  |
|  | ) | Director |
|  |  |  |
|  |  |  |
|  | ) |  |
|  | ) |  |
|  | ) | Director / Secretary |

1. - Schedule of amendments
2. - Recitals
3. First Recital

Complete the First Recital with this description of the Works:

Temporary Hoarding and Security Services during the Notting Hill Carnival Event 2022 at North Kensington, London (as further detailed in the Contract Documents).

1. Second Recital
   1. Complete the Second Recital with this description of the Contract Drawings:

As attached at Annex A.

* 1. Delete the following:

"Work Schedules"

* 1. Delete the final paragraph of the Second Recital and replace with:

"and those documents are attached to this Contract at Annexes A and B."

1. Third Recital

Add to the end of the Third Recital: "or has otherwise provided a breakdown of the Contract Sum, which is attached at Annex C of this Contract."

1. - Articles
2. Article 2: Contract Sum

Complete Article 2 with this Contract Sum:

[SUM IN WORDS] (£[SUM IN FIGURES])

1. Article 3: Architect / Contract Administrator

Complete Article 3 with this Architect / Contract Administrator:

[NAME OF FIRM] of [ADDRESS] (company number [NUMBER])

Insert the following at the end of Article 3: “The Contractor shall, in good faith, fully cooperate with the Architect / Contract Administrator at all times in the performance of its obligations under this Contract.”

1. Article 4: Principal Designer

Complete Article 4 with this Principal Designer:

The Architect / Contract Administrator **OR** [NAME OF FIRM] of [ADDRESS] (company number [NUMBER])

1. Article 5: Principal Contractor

Complete Article 5 with this Principal Contractor:

The Contractor **OR** [NAME OF FIRM] of [ADDRESS] (company number [NUMBER])

1. New Article 9: Contractor's Parent Company Guarantee

~~Insert new Article 9:~~

~~"The Contractor shall, no later than the date of this Contract, procure the execution and delivery of a parent company guarantee in favour of the Employer in the form attached at Schedule 2 to the Schedule of Amendments. The parent company guarantee shall be executed and delivered by [NAME AND COMPANY NUMBER OF CONTRACTOR'S PARENT COMPANY]. If the Contractor does not procure execution and delivery of the parent company guarantee in accordance with this Article 9, then, notwithstanding any other term of this Contract, the final date for payment of each sum which shall become due to the Contractor under this Contract shall be extended until such time it is executed and delivered."~~

1. New Article 10: Performance Bond

~~Insert new Article 10:~~

~~"The Contractor shall, no later than the date of this Contract, procure the execution and delivery of a performance bond in favour of the Employer in the form attached at Schedule 3 to the Schedule of Amendments. The bond amount shall be no less than [10%] of the Contract Sum. The bond shall be executed and delivered by a surety approved by the Employer, acting reasonably. If the Contractor does not procure execution and delivery of the performance bond in accordance with this Article 10 then, notwithstanding any other term of this Contract, the final date for payment of each sum which shall become due to the Contractor under this Contract shall be extended until such time as the required performance bond is delivered."~~

1. New Article 11: Effect of Approval

Insert new Article 11:

"Notwithstanding any other provision of this Contract, the Contractor shall not be relieved from its obligations under this Contract nor shall such obligations be removed, restricted, limited or qualified in any way by the presence of the Employer or the Architect / Contract Administrator or their agents or representatives on the site of the Works, or the carrying out of tests on the instructions of the Employer or the Architect / Contract Administrator or by any instruction, direction, admission, consent, approval, confirmation, sanction, acknowledgement, advice or inspection made or given by or on behalf of the Employer or the Architect / Contract Administrator."

1. - Contract Particulars

| **Clause Reference** | **Subject** | **Particulars** | |
| --- | --- | --- | --- |
| *Fourth Recital and Schedule 2 (paragraphs 1.1, 1.2, 1.5, 1.6, 2.1 and 2.2)* | Base Date | [DATE] | |
| *Fourth Recital and clause 4·2* | Construction Industry Scheme (CIS) | Employer at the Base Date for the purposes of the CIS | is a ‘contractor’ |
| *Fifth Recital* | CDM Regulations | The project is not notifiable. | |
| *Sixth Recital* | Framework Agreement (if applicable)  *(State date, title and parties.)* | Not applicable | |
| *Seventh Recital and Schedule 3* | Supplemental Provisions  *(Where neither entry against an item below is deleted, the relevant Supplemental Provision applies.)* | | |
| Collaborative working | Supplemental Provision 1 applies | |
| Health and safety | Supplemental Provision 2 applies | |
| Cost savings and value improvements | Supplemental Provision 3 applies | |
| Sustainable development and environmental considerations | Supplemental Provision 4 applies | |
| Performance indicators and monitoring | Supplemental Provision 5 does not apply | |
| Notification and negotiation of disputes | Supplemental Provision 6 applies | |
| Where Supplemental Provision 6 applies, the respective nominees of the Parties are | Employer’s nominee: Patrick Sullivan  Contractor's nominee: [ ]  or such replacement as each Party may notify to the other from time to time. | |
| *Article 7* | Arbitration  *(If neither entry is deleted, Article 7 and Schedule 1 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it must be stated that Article 7 and Schedule 1 apply.)* | Article 7 and Schedule 1 *(Arbitration)* do not apply | |
| 2.2 | Works commencement date | 15 August 2022 | |
| 2.2 | Date for Completion | 6 September 2022  or such later date for completion as is fixed under clause 2.7 | |
| 2.8 | Liquidated damages | at the rate of £Nil per week or pro-rata for part thereof | |
| 2.9A | Pre-requisites to practical completion | In addition to the matters listed at clause 2.9A, the following shall be a pre-requisite to achievement of practical completion:  Nil | |
| 2.10 | Rectification Period | 12 months from the date of practical completion. | |
| 4.3 | Interim payments - Interim Valuation Dates | The first Interim Valuation Date is [DATE] and thereafter the same day in each calendar month. | |
| 4.3 | Payments due prior to practical completion - percentage of the total value of work etc.  *(The percentage is 95 per cent unless a different rate is stated.)* | 95% | |
| 4.3 | Payments becoming due on or after practical completion - percentage of total amount to be paid to the Contractor  *(The percentage is 97.5 per cent unless a different rate is stated.)* | 97.5% | |
| 4.8.1 | Supply of documentation for computation of amount to be finally certified  *(The period is 3 months unless a different period is stated.)* | 3 months from the date of practical completion | |
| 5.3 | Contractor’s Public Liability Insurance: injury to persons or property - the required level of cover is not less than | £10m for any one occurrence or series of occurrences arising out of one event | |
| 5.3B | Third party consents, approvals, licences and permissions | The Contractor is responsible for obtaining the following without addition to the Contract Sum:  NA | |
| 5.4A, 5.4B and 5.4C | Insurance of the Works etc. – alternative provisions | Clause 5.4C *(Works and existing structures insurance by other means)* applies. | |
| 5.4A and 5.4B | Percentage to cover professional fees  *(If no other percentage is stated, it shall be 15 per cent.)* | 15 per cent | |
| 5.4C | Insurance arrangements - details of the required policy or policies | are set out in the following document:  [Insert details of insurance arrangements for Works and existing structures if clause 5.4C applies] | |
| 7.2 | Adjudication | The Adjudicator is to be nominated by the nominating body | |
| Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)  *(Where an Adjudicator is not named and a nominating body has not been selected, the nominating body shall be one of the bodies listed opposite selected by the Party requiring the reference to adjudication.)* | The Royal Institution of Chartered Surveyors | |

PART 4 – Conditions

1. Clause 1.1
   1. Amend these definitions:
      1. Agreement: add to the end of the definition, before the full stop:

", each as amended by the Schedule of Amendments".

* + 1. Article: add to the end of the definition, before the full stop:

", as amended by Part 2 of the Schedule of Amendments".

* + 1. CDM Regulations: add to the end of the definition, before the full stop:

"and any related guidance requirements issued by the Health and Safety Executive from time to time, or any remaking thereof or any amendments to a regulation therein".

* + 1. Conditions: add to the end of the definition, before the full stop:

", each as amended by Part 4 of the Schedule of Amendments".

* + 1. Contract Particulars: add to the end of the definition, before the full stop:

", as set out in Part 3 of the Schedule of Amendments".

* + 1. Joint Names Policy: add after “the Contractor”:

~~“and [insert details of any third party / parties that need to be covered by the CAR policy]”]~~

* + 1. Recitals: add to the end of the definition, before the full stop:

", as amended by Part 1 of the Schedule of Amendments".

* 1. Add these definitions:

"Construction Products Regulations: the Construction Products Regulations 2013 (SI 2013/1387) and the Construction Products Regulation (305/2011/EU)."

"Contract Documents: the Agreement, these Conditions and all Schedules and Annexes hereto, the Contract Drawings, the Contract Specification, the Work Schedules, and the Contractor's priced Contract Specification or Schedule of Rates or pricing breakdown (as applicable)."

“Covid-19 Pandemic: the outbreak of the virus known as Coronavirus or Covid-19 (recognised as a pandemic by the World Health Organization on 11 March 2020), including any secondary or subsequent resurgence of that virus or a mutated form of the same.”

"Deleterious: materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the time of use as posing a threat to the health and safety of any person; or posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works; or reducing, or possibly reducing, the normal life expectancy of the Works or any part or component of the Works; or not being in accordance with any relevant British or European Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or having been supplied or placed on the market in breach of the Construction Products Regulations."

“Employer’s Policies: the Employer's policies set out at Annex D to this Contract.”

"Funder: a person that has provided, or is to provide, finance in connection with the whole or any part of the Works or the completed Works; or the site of the Works, whether that person acts on its own account, as agent for a syndicate of other parties or otherwise (including, without limitation, any entity that enters or has entered into a ‘forward funding’ or ‘forward purchase’ agreement with the Employer)."

"Purchaser: any person (save for a residential occupier) who takes or agrees to take a freehold interest in the whole or any part of the Works."

“Schedule of Information Requirements: a schedule stating the information that the Contractor requires the Employer, the Architect / Contract Administrator and the Employer’s Persons to release and the required timescales for that release.”

"Tenant: any person (save for a residential occupier) who takes or agrees to take a leasehold interest in the whole or any part of the Works."

"Third Party Agreements: the agreements, or extracts from agreements, between the Employer and third parties, which may affect the Works, attached at Schedule 4 to the Schedule of Amendments, as supplemented by any instruction from the Architect / Contract Administrator referred to in clause 3.6."

“Wage Levels: means:

* in relation to employees working in London, the minimum wage set by the Resolution Foundation (or any replacement or successor body) on behalf of the Living Wage Foundation (or any replacement or successor body) as the London Living Wage from time to time;
* in relation to employees working outside of London and aged 25 or over, the minimum wage set by the Resolution Foundation (or any replacement or successor body) on behalf of the Living Wage Foundation (or any replacement or successor body) as the National Living Wage from time to time; and
* in relation to employees working outside of London and aged 24 or under, the national minimum wage.”

1. Clause 1.2

In clause 1.2, after "the Contract Specification" insert ", the Contractor's pricing breakdown". After "override or modify", add "the Schedule of Amendments, "

1. Clause 1.5

Delete "Notwithstanding any other provision of this Contract," and replace with "Subject to clauses 3.1 and 5A of this Contract,"

1. Clause 1.7

In clause 1.7.2 delete "and either Party's consent under clause 3.1" and replace with "or clause 3.1.4".

1. Clause 1.9

Insert a new clause 1.9:

"The appointment of the Contractor under this Contract shall be deemed to have commenced with effect from the date when the Contractor first began to carry out any services or works relating to the Works. To the extent that any such services or works were carried out prior to or otherwise than pursuant to this Contract [(whether under [the letter[s] of intent dated [ ],[, pre – construction services agreements dated [ ]] or otherwise)], the duties and obligations contained in this Contract shall be deemed to apply to the carrying out of those services or works. All payments made in respect of services or works carried out prior to the date of this Contract shall be treated as payments on account of sums due under this Contract."

1. Clause 2.1
   1. Insert a new clause 2.1.4: "The Contractor shall not use anything in the Works, which, at the time of use, is Deleterious."
   2. Insert a new sub-clause 2.1.5:

“The Contractor shall ensure that all goods, materials, products and equipment intended for incorporation in the Works are correctly and properly installed in accordance with manufacturer’s instructions and recommendations. To the extent that the Contractor considers an alternative method of installation is required or would better suit any goods, materials, products or equipment, it shall seek the Architect / Contract Administrator’s prior written approval. Any such approval given by the Architect / Contract Administrator shall not relieve the Contractor from his obligation to ensure that goods, materials, products and equipment are correctly and properly installed."

1. Clause 2.1A

Insert new clause 2.1A:

"**Audit, Employer Policies, Wage Levels and publicity**

.1 The Contractor shall:

.1 at all times maintain complete and accurate records and information as to all work and services carried out, and all sums paid, under this Contract;

.2 afford the Employer and/or the Employer's designated auditor(s) access to all such records and information at all reasonable times on request; and

.3 provide copies of such records and information as and when reasonably required by the Employer and/or the Employer's designated auditor(s).

.2 The Contractor shall, and shall procure that the Contractor’s Persons, comply with the Employer’s Policies.

.3 The Contractor shall ensure that staff employed by it, or by any of its sub-contractors, who are engaged on the provision of the Works are paid no less than the relevant Wage Levels.

.4 The Contractor shall not, and shall procure that the Contractor’s Persons shall not, without the prior written consent of the Employer publish alone or in conjunction with any other person any articles, illustrations, photographs, videos or press announcements relating to the Works, or otherwise publicise this Contract or the Works, save in accordance with any legal obligation upon the Contractor to do so."

1. Clause 2.1B

Insert new clause 2.1B:

“**Covid-19 precautions**

The Contractor undertakes:

.1 to take all practicable steps to prevent the transmission of Covid-19 (and other disease and infection) at the site and generally among the Contractor’s Persons;

.2 to comply, and to require all persons coming onto the site or otherwise performing the Works to comply, at all times with all Statutory Requirements, good industry practice, guidance and operational protocols relating to the Covid-19 Pandemic;

.3 to comply with all Covid-19 Pandemic related reporting requirements, data gathering and information sharing requirements reasonably imposed by the Employer from time to time; and

.4 to require its subcontractors (at all levels) to agree a clause equivalent in all material respects to this clause 2.1B; and

.5 to provide a weekly update report (to be issued each Friday afternoon) identifying any known impacts of the Covid-19 Pandemic on the regular progress of the Works.”

1. Clause 2.1C

Insert a new clause 2.1C:

~~“.1~~ **~~[Note: Amend this opening paragraph as needed to suit the requirements of the particular project]~~** ~~The Contractor acknowledges that the site forms part of~~ ***~~[insert nature of the site, e.g. a school]~~*** ~~and that certain related persons (the “~~**~~Other Personnel~~**~~”) will be present during the carrying out of the Works. The Contractor further acknowledges that the Employer may procure the completion of certain works not forming part of this Contract (the “~~**~~Third Party Works~~**~~”) during the carrying out of the Works. The Contractor shall:~~

~~.1       fully and actively cooperate with the Other Personnel and any contractors engaged in connection with the Third Party Works in the performance of the Contractor’s duties and obligations under this Contract;~~

~~.2        comply with all reasonable instructions issued by the Employer (or the Architect / Contract Administrator) in respect of the coordination of the Works with the Third Party Works and the requirements and activities of the Other Personnel; and~~

~~.3        take all reasonably practicable measures to ensure that no unforeseen interruption or interference is caused by or to the Other Personnel or the Third Party Works in the execution of the Works.~~

~~Subject to clause 2.1C.2 and 2.1C.3, the Contractor shall not be entitled to an extension of time or additional payment (whether by addition to the Contract Sum or otherwise) due to the requirements of this clause.~~

~~.2         Where and to the extent that the Third Party Works or the requirements and activities of the Other Personnel are not sufficiently detailed in the Contract Documents to enable a competent and experienced contractor to carry out and complete the Works in conjunction with the same, without consequent delay and/or disruption to the Works, then such consequent delay and/or disruption shall entitle the Contractor to apply for an extension of time under clause 2.7.~~

~~.3         Where and to the extent that the regular progress of the Works is delayed or disrupted due to any impediment, prevention or default (whether by act or omission) by the Other Personnel or any contractor engaged in connection with the Third Party Works, then this shall entitle the Contractor to apply for an extension of time under clause 2.7.”]~~

1. Clause 2.4

Delete the existing text of clause 2.4 and replace with the following:

".1 Any inconsistency in or between documents prepared by or on behalf of the Employer shall be corrected and any such correction which results in an addition, omission or other change shall be treated as a variation under clause 3.6.1.

.2 Any inconsistency in or between documents prepared by or on behalf of the Contractor, and any inconsistency between such documents and any documents prepared by or on behalf of the Employer, shall be corrected by the Contractor at his own expense after the Architect / Contract Administrator has approved the manner in which the Contractor proposes to deal with the inconsistency."

1. Clause 2.7

Insert the following at the end of the first sentence of clause 2.7, before the full stop:

“(such notification to include, without limitation, (i) a proposed revised programme for the Works; and (ii) copies of any related delay notifications or particulars issued by the Contractor’s sub-contractors (such copies to be provided on an open-book basis))”.

1. Clause 2.7A

Insert a new clause 2.7A as follows:

"The Contractor shall not be entitled to any extension of time in respect of any delay attributable to any act, breach of contract, negligence, omission or default by the Contractor or any agent, employee or other person engaged by the Contractor.”

1. Clause 2.7B

Insert a new clause 2.7B as follows:

“Without prejudice to the generality of clause 2.7A, if the Contractor fails to give the notice and/or particulars required under clause 2.7 at the earliest practicable opportunity when a competent and experienced contractor could have given them, then any associated extension of time shall be assessed as if the Contractor had given the notice and/or particulars at that time.”

1. Clause 2.8

Insert the following new clause 2.8.4:

“In circumstances where the employment of the Contractor is terminated after the date fixed for completion and prior to the date of practical completion of the Works:

* regardless of the reason for termination, the Employer shall remain entitled to recover, withhold or deduct liquidated damages for the period between the date fixed for completion and the date of termination of the Contractor’s employment; and
* where the Contractor’s employment is terminated under clause 6.4, 6.5 or 6.6, the Employer shall be further entitled to recover (in accordance with clause 6.7.3.1) any expense, loss and/or damage caused to the Employer by the delay to completion of the Works and relating to the period following the date of termination of the Contractor’s employment.”

1. Clause 2.9A

Insert new clause 2.9A:

"It shall be a pre-requisite to practical completion being certified that the Contractor shall have:

.1 completed the Works such that they are free from apparent defects, subject only to minor defects which do not affect or impair the use, enjoyment, occupation and/or fitting out of the Works by the Employer;

.2 delivered all collateral warranties required under this Contract;

.3 provided all records, documents, commissioning data, maintenance hand over schedules, manufacturers warranties, operation certificates and commissioning schedules in relation to the Works, in accordance with the Contract Documents and the Employer's reasonable requirements; and

.4 satisfied any further pre-requisites to practical completion as may be stated in the Contract Particulars."

1. Clause 2.10

Add the following to the end of clause 2.10:

"Any defects, shrinkages and other faults notified in accordance with this clause 2.10 shall be made good by the Contractor within a reasonable time (and forthwith in the case of a defect, shrinkage or other fault raising health and safety issues or preventing occupation or use of the relevant part of the Works). If the Contractor fails to make good any defects, shrinkages or other faults notified by the Employer pursuant to this clause within the time required under this clause then the Employer shall be entitled to instruct another contractor to carry out such works and to recover the cost of the same from the Contractor as a debt and/or to deduct the same from any monies otherwise due to the Contractor."

1. Clause 2.10A

Add a new clause 2.10A after clause 2.10:

"**Snagging list and defects, shrinkages or other faults remaining at practical completion**

Clause 2.10 shall, without limitation, apply to:

.1 any items identified on any snagging list issued by the Architect/Contract Administrator at or around practical completion;

.2 any defects, shrinkages or other faults in the Works at practical completion; and

.3 any incomplete work, forming part of the Works, remaining at practical completion."

1. Clause 2.12

Add a new clause 2.12 after clause 2.11:

"**Third Party Agreements**

.1 The Contractor shall be deemed to have read the Third Party Agreements and to be fully aware of the obligations, risks and liabilities assumed by the Employer under them.

.2 The Contractor shall ensure that no act or default or omission on its part or on the part of any of its employees or sub-contractors in relation to the performance by the Contractor of its obligations under this Contract shall cause, contribute or otherwise give rise to any breach by the Employer of any of its obligations under the Third Party Agreements."

1. Clause 2.13

Insert a new clause 2.13:

“Contractor’s additional information sharing requirements

.1 The Contractor shall at its own cost prepare, and keep updated during the carrying out of the Works, a master programme showing how the Contractor intends to time and sequence the Works (including the design phase, lead-in times for procurement of materials, and the construction phase) in order to achieve practical completion on or before the relevant completion date. The Contractor shall provide a copy of the latest master programme to the Employer whenever reasonably requested and the Employer shall be entitled to require the Contractor to submit a revised programme if at any time it considers that the details do not comply with the requirements of this Contract.

.2 Where and to the extent required by the Employer or the Architect / Contract Administrator, the Contractor shall at its own cost prepare, and keep updated during the carrying out of the Works, a Schedule of Information Requirements.

.3 Without prejudice to its other duties and obligations under this Contract, the Contractor shall provide (at its own cost) such information as the Employer or the Employer’s Persons may require from time to time on the nature, state and progress of the Works (including without limitation information on the selection of goods and materials, buildability, procurement times and construction times).”

1. Clause 3.1

Delete clause 3.1 and replace with:

".1 The Employer may on two occasions without the consent of the Contractor assign or otherwise transfer the benefit of this Contract to any person. In this Contract the term "Employer" shall be construed accordingly.

.2 The Employer shall notify the Contractor of any assignment within 10 Business Days.

.3 The Contractor shall not contend that any person to whom the benefit of this Contract is assigned under this clause 3.1 may not recover any sum under this Contract because that person is an assignee and not a named party to this Contract.

.4 The Contractor shall not assign or charge the benefit of this Contract or any right arising under it without the Employer's prior consent, which the Employer may withhold at its absolute discretion (save that the Employer’s consent shall not be required where and to the extent that the assignment is automatically permitted by virtue of the Business Contract Terms (Assignment of Receivables) Regulations 2018)."

1. Clause 3.2

Insert the following at the end of clause 3.2:

“The Employer shall be entitled (acting reasonably) to require the removal of a person in charge or any other person engaged on the carrying out of the Works if, in the Employer's opinion, their performance or conduct is or has been unsatisfactory and the Contractor shall promptly remove such person and replace them with such person as the Employer shall first have approved in writing. Any cost incurred by the Contractor in replacing a person in charge or any other person engaged on the carrying out of the Works (in any circumstances) shall be borne by the Contractor. The person in charge shall keep complete and accurate records regarding on-site activity in accordance with any requirements reasonably imposed by the Employer and shall make the same available for inspection by the Employer at all reasonable times.”

1. Clause 3.4

Delete the final sentence of clause 3.4.1 and replace with "If instructions are given orally the Architect / Contract Administrator shall confirm them in writing as soon as reasonably practicable".

1. Clause 3.6

Insert the following at the end of clause 3.6.1:

"The Architect / Contract Administrator or the Employer may, without invalidating this Contract, issue an instruction supplementing or amending the Third Party Agreements."

1. Clause 3.9
   1. In clause 3.9.4, delete "immediately" and replace with "promptly".
   2. Add new clause 3.9.5:

"where the Contractor is not the Principal Designer but is the Principal Contractor and the Principal Designer's appointment concludes before practical completion of the Works, the Contractor shall review, update and revise the health and safety file in accordance with regulations 12(8) to (10) of the CDM Regulations. Where the Contractor is not the Principal Designer, the Contractor shall further provide (at its own cost) all necessary assistance to and co-operate fully with the Principal Designer in the performance of its duties."

* 1. Add a new clause 3.9.6:

“the Contractor warrants to the Employer that he has the necessary skills, knowledge and experience to undertake all roles performed pursuant to the CDM Regulations under or in connection with this Contract and that it has sufficient resources and will allocate those resources to the fulfilment of such duties.”

1. Clause 3.10

Insert new clause 3.10:

"Project meetings

The Contractor shall attend project meetings convened by the Architect/Contract Administrator upon reasonable notice and at reasonable intervals and representatives of the Employer and the Employer's professional consultants and any other persons authorised by the Employer or the Architect/Contract Administrator(including, without limitation, representatives of Purchasers, Tenants and/or Funders) shall be permitted to attend such meetings."

1. Clause 4.1A

Insert new clause 4.1A:

~~"~~**~~Covid preliminaries and fixed costs~~**

~~In respect of preliminaries and fixed costs which form part of the Contract Sum, the Contractor has identified a weekly amount of £[insert the weekly amount bid by the Contractor for Covid caused prelims etc.] which is attributable to the Covid-19 Pandemic. Upon any withdrawal or relaxation of the published industry guidance and/or Statutory Requirements on which such costs are based, the Employer (or the Architect / Contract Administrator on his behalf) shall have the power to issue an instruction to the Contractor omitting from the Contract Sum all or part (as applicable) of the aforementioned weekly amount as is fair and reasonable in all the circumstances to reflect the reduction in preliminaries and fixed costs to be incurred by the Contractor following such withdrawal or relaxation. With effect from the date falling [x] days after the Employer’s (or the Architect / Contract Administrator’s) instruction, the Contract Sum shall be adjusted to omit the value of the preliminaries and fixed costs reduction identified in the instruction.”~~

1. Clause 4.3
   1. In the opening paragraph, delete “the date 7 days after”.
   2. Insert at the end of clause 4.3.2 “and provided that the Contractor has provided reasonable evidence that unencumbered title to the materials and goods shall pass to the Employer upon payment”.
   3. In the final sentence, delete "14 days" and replace with "30 days".
2. Clause 4.5

In clause 4.5.4, delete "5 days" and replace with "1 day".

1. Clause 4.8

In clause 4.8.3, delete “14 days” and replace with “30 days”.

1. Clause 4.9

After “Subject to clauses 3.6, 3.7” insert: “, 4.1A”.

1. Clause 4.10

Insert new clause 4.10:

"Retention

The Employer's interest in the percentage of the total value not included in the amounts of the interim payments to be certified under clause 4.3 shall be:

.1 without fiduciary obligation to the Contractor or any third party;

.2 without obligation to set aside any amount representing that percentage in a separate bank account; and

.3 a full beneficial interest, including a full beneficial interest in any interest accruing on that percentage without obligation to account to the Contractor for any such interest."

1. Clause 5.1

In clause 5.1, after "caused by the carrying out of the Works" insert:

"or of any other obligation pursuant to Section 2 or Section 3 of the Conditions".

1. Clause 5.2

In clause 5.2, after "by reason of the carrying out of the Works" insert:

"or of any other obligation pursuant to Section 2 or Section 3 of the Conditions".

1. Clause 5.3

Insert at the end of clause 5.3.1, before the semi-colon: “and shall have a minimum indemnity limit of £10,000,000 for any one claim”.

1. Clause 5.3A

Add new clause 5.3A after clause 5.3:

"Contractor to prevent nuisance

The Contractor shall prevent any unlawful nuisance (including any unlawful noisy working operations) or other unlawful interference with the rights of any adjoining owner, tenant or occupier or any statutory undertaker, of which the Contractor is or ought reasonably to have been aware, arising out of the carrying out of the Works or of any other obligation pursuant to Section 2 or Section 3 of the Conditions. The Contractor shall assist the Employer in defending any action or proceedings in relation to any such nuisance or interference. The Contractor shall be responsible for and shall indemnify the Employer from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default by the Contractor in performing its obligations under this clause 5.3A."

1. Clause 5.3B

Add a new clause 5.3B after clause 5.3A:

"**Trespass and third party consents**

.1 Without prejudice to clauses 5.1, 5.2 and 5.3A, the Contractor shall ensure that there is no trespass by the Contractor or the Contractor's Persons (including the oversailing of tower crane jibs) on or over any adjoining or neighbouring property arising out of the carrying out of the Works or of any other obligation pursuant to Section 2 or Section 3 of the Conditions and shall take all reasonable safety and other measures to prevent damage or injury to any persons including the occupiers of adjoining or neighbouring property and members of the public.

.2 The Contractor shall obtain, without addition or adjustment of the Contract Sum, any third party consents, approvals, licences or permissions stated in the Contract Particulars.

.3 If requested by the Employer, the Contractor at its own cost shall provide reasonable assistance (including the provision of copies of drawings and specifications) to the Employer and its nominated representatives and consultants in obtaining any third party consents, approvals, licences or permissions which are not the Contractor's responsibility to obtain under clause 5.3B.2.

.4 The Contractor shall comply, and shall procure that all Contractor’s Persons comply, in all respects with any third party consents, approvals, licences or permissions referenced in this clause 5.3B, as the same may be varied from time to time."

1. Clause 5.5A

Add a new clause 5.5A after clause 5.5:

“The Contractor shall:

.1 notify the Employer in writing from time to time of any change in its insurance arrangements; and

.2 not do or permit or suffer to be done any act or thing which may vitiate or prejudice the recovery of any sum under any policy or policies of insurance effected by either Party.”

1. Clause 5.7

In the opening paragraph of clause 5.7, delete “either Party” and replace with “the Employer”. Delete “the other” and replace with “the Contractor”.

1. Section 5A

Insert a new Section 5A entitled "Collateral warranties":

**"5A** **Contractor's collateral warranty**

.1 Within 10 Business Days of a request from the Employer, the Contractor shall execute and deliver a deed or deeds of collateral warranty in favour of any [Funder, any Purchaser and any Tenant] identified in the Employer's request, in the form of the Contractor's deed of collateral warranty contained in Schedule 5 to the Schedule of Amendments, with such amendments as the relevant beneficiary may reasonably request.

.2 If the Contractor does not procure execution and delivery of any such warranty within the time period required under clause 5A.1 then, notwithstanding any other term of this Contract, the final date for payment of each sum shall which shall become due to the Contractor under this Contract shall be extended until such time as the required warranty is executed and delivered."

1. Clause 6.4
   1. Insert new sub-clause 6.4.1.4:

".4 fails to maintain or provide adequate evidence of any insurance cover required to be procured by the Contractor under this Contract"

* 1. Insert a new clause 6.4.3:

"The Employer may immediately terminate the Contractor's employment under this Contract by giving written notice, if the Contractor is in material or persistent breach of its obligations under this Contract and fails to rectify such breach within 14 days of being notified of the same."

1. Clause 6.6

Delete the existing text of clause 6.6 and replace with the following:

“.1 The Employer shall be entitled at any time to terminate the Contractor’s employment under this Contract or any other contract with the Employer and recover all its loss if the Contractor, the Contractor’s Persons or anyone acting on the Contractor’s behalf do any of the following things:

.1 offer, give or agree to give to anyone any inducement fee or reward in respect of this Contract or any other contract with the Employer (even if the Contractor does not know what has been done); or

.2 commit an offence under the Bribery Act 2010; or

.3 commit any fraud in connection with this or any other contract with the Employer whether alone or in conjunction with the Employer’s Persons (including any person employed on a permanent, temporary or agency arrangement by the Employer); or

.4 give any fee or reward the receipt of which is an offence under sub-section (2) of section 117 of the Local Government Act 1972.

.2 The Employer shall be entitled at any time to terminate the Contractor’s employment under this or any other contract with the Employer if (where this Contract is one to which regulation 73(1) of the PC Regulations applies) the circumstances set out in regulations 73(1)(b) of the PC Regulations apply.

.3 Any clause under this Contract limiting the Contractor’s liability shall cease to apply in circumstances where the Contractor’s employment is terminated pursuant to this clause 6.6.”

1. Clause 6.10
   1. In the final paragraph of clause 6.10.1, delete "either Party, subject to clause 6.10.2," and replace with "the Employer". Delete "the other" and replace with "the Contractor".
   2. Delete clause 6.10.2 and replace with "Not used".
2. Clause 8

Insert a new clause 8 as follows:

“**Data protection**

~~Italicised wording in this clause 8 shall have the meanings ascribed to it under the Data Protection Act 2018. It is not anticipated that the Contractor will act as a~~ *~~data processor~~* ~~of any~~ *~~personal data~~* ~~in respect of which the Employer is a~~ *~~data controller~~*~~. To the extent that the Contractor is required by the Employer to act as a~~ *~~data processor~~* ~~at any stage, the parties shall, prior to the Contractor acting in this capacity, first agree the terms of a written agreement to set out the ambit of such role. Any~~ *~~processing~~* ~~of~~ *~~personal data~~* ~~prior to such written agreement being concluded is not authorised by the Employer.”~~

.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Employer is the data controller and the Contractor is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).

.3 Without prejudice to the generality of clause 8.1, the Employer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Contractor for the duration and purposes of this Contract.

.4 Without prejudice to the generality of clause 8.1, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this Contract:

.1 process that Personal Data only on the written instructions of the Employer as set out in the Data Processing Instructions Schedule attached at Annex E to this Contract or otherwise provided by the Employer, unless the Contractor is required by Applicable Laws. Where the Contractor is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Contractor shall promptly notify the Employer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Contractor from so notifying the Employer;

.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Employer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Employer has been obtained and the following conditions are fulfilled:

.1 the Employer or the Contractor has provided appropriate safeguards in relation to the transfer;

.2 the data subject has enforceable rights and effective legal remedies;

.3 the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

.4 the Contractor complies with reasonable instructions notified to it in advance by the Employer with respect to the processing of the Personal Data;

.5 assist the Employer in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

.6 notify the Employer without undue delay on becoming aware of a Personal Data breach;

.7 at the written direction of the Employer, delete or return Personal Data and copies thereof to the Employer on termination of the Contract unless required by Applicable Laws to store the Personal Data; and

.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 8 and allow for audits by the Employer or the Employer's designated auditor.

.5 The Employer does not consent to the Contractor appointing any third party processor of Personal Data under this Contract.

.6 The Employer may, at any time on not less than 30 days’ notice, revise this clause 8 by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this Contract).

.7 In this clause 8, the following definitions apply:

“Applicable Laws: the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to process Personal Data."

"Data Protection Legislation: (i) the GDPR; (ii) the Data Protection Act 2018; (iii) any laws which implement any such laws; and (iv) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing.”

"GDPR: the General Data Protection Regulation ((EU) 2016/679)."”

1. Clause 9

Insert a new clause 9 as follows:

“**Anti-Slavery**

.1 The Contractor shall, and shall procure that the Contractor’s Persons, comply with the [Modern Slavery Act 2015](https://www.lexisnexis.com/uk/lexispsl/commercial/docfromresult/D-WA-A-CA-BC-MsSWYWD-UUA-UZEYAAUUW-U-U-U-U-U-U-AZUUWVZZUB-ACEDYWDVUB-BYVCZWBZ-U-U/6/linkHandler.faces?psldocinfo=Terms_and_conditions_for_the_sale_of_goods_and_services_business_to_business_pro_supplier&linkInfo=F%23GB%23UK_ACTS%23num%252015_30a_Title%25&A=0.22814760534583756&bct=A&risb=&service=citation&langcountry=GB" \t "_parent) and any related Employer’s Policies.

.2 Without prejudice to the generality of clause 9.1, the Contractor undertakes, warrants and represents that:

.1 neither the Contractor nor any of its officers, employees, agents or subcontractors has:

.1 committed an offence under the [Modern Slavery Act 2015](https://www.lexisnexis.com/uk/lexispsl/commercial/docfromresult/D-WA-A-CA-BC-MsSWYWD-UUA-UZEYAAUUW-U-U-U-U-U-U-AZUUWVZZUB-ACEDYWDVUB-BYVCZWBZ-U-U/6/linkHandler.faces?psldocinfo=Terms_and_conditions_for_the_sale_of_goods_and_services_business_to_business_pro_supplier&linkInfo=F%23GB%23UK_ACTS%23num%252015_30a_Title%25&A=0.12760841368112064&bct=A&risb=&service=citation&langcountry=GB" \t "_parent) (an “MSA Offence”); or

.2 been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the [Modern Slavery Act 2015](https://www.lexisnexis.com/uk/lexispsl/commercial/docfromresult/D-WA-A-CA-BC-MsSWYWD-UUA-UZEYAAUUW-U-U-U-U-U-U-AZUUWVZZUB-ACEDYWDVUB-BYVCZWBZ-U-U/6/linkHandler.faces?psldocinfo=Terms_and_conditions_for_the_sale_of_goods_and_services_business_to_business_pro_supplier&linkInfo=F%23GB%23UK_ACTS%23num%252015_30a_Title%25&A=0.7279748899274029&bct=A&risb=&service=citation&langcountry=GB" \t "_parent); or

.3 is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the [Modern Slavery Act 2015](https://www.lexisnexis.com/uk/lexispsl/commercial/docfromresult/D-WA-A-CA-BC-MsSWYWD-UUA-UZEYAAUUW-U-U-U-U-U-U-AZUUWVZZUB-ACEDYWDVUB-BYVCZWBZ-U-U/6/linkHandler.faces?psldocinfo=Terms_and_conditions_for_the_sale_of_goods_and_services_business_to_business_pro_supplier&linkInfo=F%23GB%23UK_ACTS%23num%252015_30a_Title%25&A=0.8263395979225712&bct=A&risb=&service=citation&langcountry=GB" \t "_parent); and

.2 it has implemented due diligence procedures to ensure compliance with the [Modern Slavery Act 2015](https://www.lexisnexis.com/uk/lexispsl/commercial/docfromresult/D-WA-A-CA-BC-MsSWYWD-UUA-UZEYAAUUW-U-U-U-U-U-U-AZUUWVZZUB-ACEDYWDVUB-BYVCZWBZ-U-U/6/linkHandler.faces?psldocinfo=Terms_and_conditions_for_the_sale_of_goods_and_services_business_to_business_pro_supplier&linkInfo=F%23GB%23UK_ACTS%23num%252015_30a_Title%25&A=0.27764660670174246&bct=A&risb=&service=citation&langcountry=GB" \t "_parent) (and any related Employer’s Policies) in its business and supply chain, and those of its officers, employees, agents or subcontractors, which will be made available to the Employer on request at any time.

.3 The Contractor shall notify the Employer immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Contractor’s obligations under clause 9.1 or clause 9.2. Any such notice shall set out full details of the circumstances concerning the breach or potential breach of the Contractor’s obligations.

.4 Any breach of clause 9.1 or clause 9.2 by the Contractor shall be deemed to be a material breach of this Contract which is not capable of remedy and shall entitle the Employer to terminate the Contractor’s engagement with immediate effect under clause 6.4.3.”

1. JCT MW 2016, Schedule 1: Arbitration

Delete Schedule 1 to the JCT Conditions and replace with "Schedule 1 not used".

1. JCT MW 2016, Schedule 2: Fluctuations - Contribution, levy and tax changes

Delete Schedule 2 to the JCT Conditions and replace with "Schedule 2 not used".

1. JCT MW 2016, Schedule 3: Supplemental Provisions

This agreement incorporates Schedule 3 to the JCT Conditions.

Schedule 2 - Parent Company Guarantee

"Not used"

Schedule 3 - Performance Bond

"Not used"

Schedule 4 - Third Party Agreements

"Not applicable"

Schedule 5 - Contractor's collateral warranty

“Not Used”

Annex A - Contract Drawings

Annex B - Specification

Section 6 of the ITT document

Annex C - Contractor's pricing breakdown

Appendix 5

Annex D - Employer's Policies

As listed below

Appendix 7 - Contractors Code of Conduct

Appendix 8 - Contractor Fire Policy and Procedures

Appendix 9 – ER Process

Appendix 10 – HM Compensation Redress Policy

Appendix 11 – Information Sharing Agreement

Appendix 13 – Site Operating Procedures

Annex E - Data processing instructions schedule

|  |  |
| --- | --- |
| Subject matter of Processing | Communication with tenants and others in connection with the Project. |
| Duration of Processing | From the date of delivery of personal data to the date all obligations required under the contract have been performed. |
| Nature and Purpose of Processing | Receipt of data from the employer Storage of data. Use of data solely for communication  with Data Subjects in connection with the Project only, e.g. to arrange access, to provide information about the Project, to process complaints and provide feedback  Performance and monitoring of contract obligations and communications between all parties engaged on the Project Secure destruction or return of all personal data supplied by the Employer or acquired by the  Contractor in connection with the Project in accordance with the Employer’s instructions. |
| Types of Personal Data | To include as available: name, address, telephone number, email address. |
| Categories of Data Subjects | Tenants / Leaseholders / Other occupiers of relevant properties and members of the public. |